

Affirmed and Opinion filed April 13, 2000.



In The

Fourteenth Court of Appeals

NO. 14-98-00838-CV

WILLIAM A. BALDWIN, Appellant

V.

**CAROL SHORT, INDIVIDUALLY, AND AS PERSONAL REPRESENTATIVE
FOR THE ESTATE OF BETTY BALDWIN, DECEASED, Appellee**

**On Appeal from the 189th District Court
Harris County, Texas
Trial Court Cause No. 97-54344**

OPINION

William A. Baldwin sued Carol Short for breach of contract, both individually and as the personal representative for the estate of her aunt, Betty Baldwin. The court below sustained Carol Short's special appearance and dismissed the suit. We affirm the trial court's order.

This case arose out of an alleged oral contract between William A. Baldwin and his paternal uncle, Arthur Baldwin. According to William, he and Arthur made an oral contract

in 1975 in which they mutually agreed that should one pre-decease the other, the survivor would inherit one half of the deceased's estate. At the time of the alleged agreement, Arthur lived in Sun City, Arizona, and William claims he reached a rough agreement with his uncle while visiting him in Arizona. Thereafter, William traveled to Houston where he says he spoke with Arthur on the telephone numerous times. The purpose of these calls was to work out the details of the agreement.

William further contends that agreements of this sort are a tradition in the Baldwin family and that he fulfilled his portion of the bargain by executing a will that conformed to the agreement; Arthur, however, did not. Arthur died on July 13, 1980, leaving his estate to his wife Betty Baldwin. Betty moved to Indiana where she died in 1992, leaving a portion of her estate to Carol Short who also served as the personal representative of the estate. Betty Baldwin's estate was administered entirely in Indiana and was closed in 1997.

The Test for Personal Jurisdiction

A nonresident defendant may challenge a court's jurisdiction without voluntarily subjecting himself to that jurisdiction or waiving any objections to the court's actions. *See* TEX. R. CIV. P. 120a. A nonresident defendant must negate all bases of personal jurisdiction to prevail in a special appearance. *See Vosko v. Chase Manhattan Bank, N.A.*, 909 S.W.2d 95, 99 (Tex. App.–Houston [14th Dist.] 1995, writ denied).

A court may assert personal jurisdiction over a nonresident defendant only if the requirements of both the Texas long-arm statute and the Due Process Clause of the Fourteenth Amendment to the United States Constitution are satisfied. *See* U.S. CONST. amend. XIV, § 1; *Helicopteros Nacionales de Columbia v. Hall*, 466 U.S. 408, 413-14, 104 S.Ct. 1868, 80 L.Ed.2d 404 (1984). The long-arm statute allows a court to exercise personal jurisdiction over a non-resident defendant that "does business" in Texas. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 17.042 (Vernon 1986). In addition, the statute provides that

“other acts” by the nonresident can satisfy the requirement. *See Schlobohm v. Schapiro*, 784 S.W.2d 355, 356 (Tex.1990). The Texas Supreme Court has repeatedly interpreted this broad statutory language to reach as far as the federal constitutional requirements of due process will allow. *See Schlobohm*, 784 S.W.2d at 357. Consequently, the requirements of the Texas long-arm statute are satisfied if the exercise of personal jurisdiction comports with federal due process limitations.

The federal constitutional test of due process consists of two parts: (1) whether the nonresident defendant has purposely established “minimum contacts” with the forum state; and, (2) if so, whether the exercise of jurisdiction comports with “fair play and substantial justice.” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475-76, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985).

Under the minimum contacts analysis, we focus on the defendant’s *purposeful* conduct towards the forum state. *See World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291-92, 100 S.Ct. 559, 62 L Ed.2d 490 (1980). A defendant should not be subject to the jurisdiction of a foreign court based upon random, fortuitous, or attenuated contacts. The minimum contacts requirement is satisfied if either general or specific jurisdiction exists. *See Vosko*, 909 S.W.2d at 98. Specific jurisdiction attaches when the plaintiff’s cause of action arises out of, or relates to the nonresident defendant’s contacts with the forum state. To invoke a state’s specific jurisdiction, the defendant’s activities must have been “purposefully directed” to the forum and the litigation must arise from or relate to those activities. In contrast, a nonresident defendant may be subject to a state’s general jurisdiction because of continuous and systematic contacts with the state, even if the underlying cause of action did not arise from purposeful conduct in the state. *See id.* (citing *Nat’l Indus. Sand Ass’n v. Gibson*, 897 S.W.2d 769, 772 (Tex.1995)). Here, the parties agree that specific jurisdiction is the applicable standard.

The assertion of personal jurisdiction also must comport with fair play and substantial justice. In this inquiry, it is incumbent upon the defendant to present “a compelling case that the presence of some other considerations would render jurisdiction unreasonable.” *See Burger King*, 471 U.S. at 477, 105 S.Ct. 2174. The following factors, when appropriate, should be considered: (1) the burden on the defendant; (2) the interests of the forum state in adjudicating the dispute; (3) the plaintiff’s interest in obtaining convenient and effective relief; (4) the interstate judicial system’s interest in obtaining the most efficient resolution of controversies; and (5) the shared interest of the several states in furthering fundamental substantive social policies. *Id.*; *Guardian Royal Exch. Assurance, Ltd. v. English China Clays, P.L.C.*, 815 S.W.2d 223, 227-28 (Tex.1991).

The review of a special appearance involves mixed questions of law and fact. Whether the court has personal jurisdiction over a nonresident defendant is a question of law which is reviewed de novo. *See C-Loc Retention Systems, Inc. v. Hendrix*, 993 S.W.2d 473 476 (Tex.App.-Hous. (14 Dist.) 1999, no pet). However this determination may be based on the court’s resolution of underlying factual disputes. *See Conner v. ContiCarriers & Terminals, Inc.*, 944 S.W.2d 405, 411 (Tex. App.–Houston [14th Dist.] 1997, no writ). We review any factual disputes for sufficiency of the evidence, considering all evidence in the record. *See id.*

Short’s Contacts with Texas

Under principles of contract law, contractual obligations generally survive the death of a party and bind the estate if the contract is capable of being performed by the estate representative. *See Cardwell v. Sicola-Cardwell*, 978 S.W.2d 722 726 (Tex. App.–Austin 1998, pet. denied). However, Short has had no purposeful contact with the state of Texas either individually or in her capacity as executrix. Short’s only connection to the state of Texas is that she inherited property which a Texas resident claims. She has not purposefully

engaged in any acts directed towards the state of Texas. Thus, the exercise of jurisdiction would violate due process.

Accordingly, the trial court did not err in sustaining Short's special appearance and dismissing the suit against her. The order of the trial court is affirmed.

/s/ J. Harvey Hudson
Justice

Judgment rendered and Opinion filed April 13, 2000.

Panel consists of Chief Justice Murphy and Justices Anderson and Hudson.

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